

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 190 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

T G MERCHANT & CO.

Versus

DISTRICT CIVIL SUPPLIES OFFICER

Appearance:

MR ASHOK L SHAH for Petitioner

MR. B.Y.MANKAD, ASSTT.G.P. for Respondent No. 1, 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/12/97

ORAL JUDGEMENT

This petition arises from the order of confiscation made by respondent No. 2 on 29th March, 1985 under the provisions contained in the Essential Commodities Act, 1955. Said order was confirmed by the Government in Appeal on 8th October, 1985. The facts leading to the present petition are as under :

2. The petitioner claims to be an exporter. The National Agricultural Corporation Marketing Federation of India Ltd. allotted the petitioner a quota of 500 MTs HPS Ground nut Kernals for export to foreign country. Pursuant to the said quota allotted, the petitioner made a purchase of HPS Groundnut Kernals from one M/s. Panchsheel Solvent Industries, Jamnagar. The goods sold to the petitioner were packed and stored by the seller i.e. M/s. Panchsheel Solvent Industries. The agreement to purchase the said quota of groundnut kernals was free on board i.e. seller was supposed to deliver the said goods free on board. On 31st December, 1983, the District Supply Officer searched the premises of the seller M/s. Panchsheel Solvent Industries and seized the above referred goods sold to the petitioner. Since the petitioner did not possess the licence under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as "the Order"), the respondent No. 2, under its above referred order dated 29th March, 1985, confiscated the said goods. Since the said goods were to be exported to a foreign buyer, the petitioner applied for releasing the said goods which it was permitted to do under order dated 30th January, 1984 on furnishing Bank Guarantee to the tune of Rs.7,65,000/-. Feeling aggrieved by the said order of confiscation, the petitioner preferred writ petition being Special Civil Application No. 4814 of 1985 before this Court. In the meantime, he petitioner had also preferred an appeal before the Government. In view of the appeal pending before the Government, above referred writ petition was disposed of by this court with a direction to consider the judgment of this Court in the matter of Devika Devi (1983 G.L.R.215). The Government, while hearing the appeal, recorded a finding that the goods purchased by the petitioner were meant for sale in the State of Gujarat and did not believe the contention that the same was purchased for exporting to a foreign buyer. In that view of the matter, the appellate authority held that the judgment of this court in the matter of Devika Devi (supra) had no applicability on the facts of the case and confirmed the order of confiscation made by respondent No. 2. Feeling aggrieved, the petitioner has preferred the present petition.

3. Mr. Shah, the learned advocate appearing for the petitioner has contended that the petitioner had no business in the State of Gujarat and that it was not a dealer in the State of Gujarat and was not required to possess a licence under the Order. However, respondent No. 2 has wrongly held that the said order applies to all dealers wherever they may be carrying on their

business. He has submitted that the petitioner had produced all the relevant material before the Collector to establish his case that the petitioner was not a dealer doing business in the State of Gujarat nor was the goods purchased for sale in the State of Gujarat. The documents produced alongwith this petition at Annexure "A" to "C" were produced before the respondent No. 2 as well as the appellate authority. He has submitted that there is no dispute that the goods were purchased with a view to exporting the same to a foreign buyer nor it is in dispute that the petitioner did export the said goods to a foreign buyer. In that view of the matter, the judgment of this Court in the matter of Devika Devi (supra) would squarely apply to the facts of the present case.

4. Mr. Mankad, the learned AGP has submitted that if the goods were exported to a foreign buyer, the judgment in the matter of Devika Devi (supra) would certainly apply and in that event, the impugned order would be bad and illegal. He has, however, submitted that in fact, the petitioner's claim that the goods were purchased for selling the same to a foreign buyer cannot be accepted. He has, particularly, relied upon the agreements at pages 46 and 47. He has submitted that the last date of shipment was 25th December, 1983 and 15th December, 1983 while the goods were seized on 31st December, 1983. He has submitted that this fact is enough to draw an adverse inference that the goods in question were not meant for exporting to a foreign buyer and, therefore, it should be deemed to have been sold in the State of Gujarat. Since the goods have not been exported as claimed by the petitioner, the judgment in the matter of Devika Devi (supra) would have no applicability and the goods have rightly been confiscated by the competent authority and the order of confiscation made by the competent authority has rightly been confirmed by the appellate authority.

5. I am unable to accept the argument advanced by Mr. Mankad. Merely because the last date of shipment had passed, it cannot be inferred that the goods lying in the premises of M/s. Panchsheel Solvent Industries were sold within the State of Gujarat. In fact, on petitioner's application, confiscated goods were released on his furnishing a bank guarantee to the tune of Rs. 7,65,000/-. It must, therefore, be believed that the petitioner did export the goods to a foreign buyer and it was in fact export to a foreign country and, therefore, the judgment in the matter of Devika Devi (supra) would squarely apply in the facts of the case and the

petitioner, therefore, cannot be said to have committed breach of order 3 of the Order and the goods in question could not have been confiscated by the competent authority.

In view of the above discussion, this petition is allowed. The order of the competent authority dated 29th March, 1985 (Annexure "I" to the petition) and the order of the appellate authority (Annexure "J" to the petition) are quashed and set aside. The petitioner may request the Bank to release the Bank Guarantee in case it still survives. Rule is made absolute. There shall be no order as to costs.

Vyas